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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,148	02/11/2004	Robert Petit	0580-1008	1202

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EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 12/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/775,148

Applicant(s)

PETIT, ROBERT

Examiner

David J. Walczak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 7-12, 14, 17, 21-27 and 32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 13, 15, 16, 18-20 and 28-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/11/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election***

Applicant's election without traverse of Species I in the reply filed on 10/28/05 is acknowledged. The Applicant contends that claims 1-6, 13, 15-20 and 26-31 are readable thereon, however, claims 17, 26 and 27 are objected to since the elected embodiment does not include the structure defined therein, i.e., the specification, when defining the structure of the elected embodiment, does not disclose the features defined in claims 17 and 26. Accordingly, claims 1-6, 13, 15, 16, 18-20 and 28-31 will be examined herein and claims 7-12, 14, 17, 21-27 and 32 are withdrawn from further consideration.

### ***Abstract***

The abstract of the disclosure is objected to because legal phraseology such as "means" and "said" should not be present therein. Further, "Figure 1c" (line 25) should be deleted therefrom. Correction is required. See MPEP § 608.01(b).

### ***Drawings***

The drawings are objected to because numerous reference characters in the specification are not present in the drawings, i.e., P1, P2, 4' and Oi (see page 12) are not present in the drawings. The Applicant should review the drawings to ensure that all of the reference characters present in the specification are also present in the drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to

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the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: On page 6, line 9, "2f" should be --2e--. Further, reference character 25' (Figure 1a) is not present in the specification. The Applicant should review the specification to ensure that all of the reference characters present in the drawings are also present in the specification. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

Claims 1-6, 13, 15, 16, 18-20 and 28-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are replete with indefinite language which render said claims difficult to examine. For example, the terms "typically" and "so-called" are indefinite in that the metes and bounds of the claim have not been clearly defined. Further, the phrase "means of forming" (see lines 25 and 33 of claim 1) is indefinite in that it is unclear as to what structure "forms" the recited element. In regard to claim 6, this claim is indefinite in that it depends from itself. In regard to claims 18 and 20, an antecedent basis for "said orifice" should be defined (it appears that these claims should depend from claim 3). The claims should be carefully reviewed and revised to ensure that a complete and operative device is clearly defined therein.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 13, 16, 19, 29, 30 and 31 are, as best understood, rejected under 35 U.S.C. 102(b) as being anticipated by Gueret '415 (hereinafter Gueret). In regard to claim 1, Gueret discloses a "distributor – applicator" comprised of a body (see Figure 7) having a threaded cap 502 with a brush applicator 503 attached thereto wherein the body includes an axial partition/separation means 541, 561 which forms two

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compartments holding two different products and wherein each compartment includes a volume for the product and a "complementary or free volume" forming a "communication means" such that the applicator can access each compartment in order to collect the corresponding product. In regard to claim 2, a cavity in the body defines a "lower compartment" containing a fluid and a "top compartment" containing a product wherein the lower compartment is "contiguous" with a bottom of the device and the top compartment is "contiguous" with the rim 581 of the device. In regard to claim 13, separation means 541 comprises a "single piece part" with the body. In regard to claims 16 and 19, the applicator brush 305 is structured as claimed. In regard to claims 29-30, two different products are employed in the Gueret device wherein one is a fluid make-up product.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret.

Although the Gueret reference does not disclose the claimed material, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that any suitable material, including a transparent plastic material, can be used to make the device without effecting the overall operation thereof.

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***Allowable Subject Matter***


Claims 3, 4, 5, 15, 18 and 20 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
12/19/05